

SUSAN GILBERT

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1 A. Yes.
 2 Q. And if you look down at funded depreciation,
 3 it's \$180 million?
 4 A. Yes.
 5 Q. As of December 31, '96, Forbes hasn't entered
 6 the AHERF system yet, has it?
 7 A. No.
 8 Q. Okay. Are there any entities on here besides
 9 AGH that has a funded depreciation account?
 10 A. It's possible that AUHS or AUH had a very small
 11 allocation. Very small.
 12 Q. But the vast majority?
 13 A. Oh, certainly, the vast majority, but there
 14 were --
 15 Q. But the vast majority of the funded
 16 depreciation account is the AGH account, right?
 17 A. Sure.
 18 Q. All right. And if a board member on AHERF
 19 knows that, then they would know that the
 20 return that is indicated for funded
 21 depreciation here was largely earned by AGH's
 22 funded depreciation account, right?
 23 MR. RYAN: Objection.
 24 A. Yes.
 25 Q. And regardless of what percentage of the funded

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1 entry into the Master Trust.
 2 Q. That had happened by this point, right?
 3 MR. RYAN: Objection.
 4 A. Yes.
 5 Q. Well, strike that. I may be misleading you
 6 there.
 7 A. Well, it says here that Pittsburgh did not yet
 8 join the structure or will join the structure
 9 during FY '97, so --
 10 Q. That's right. The 9.9 percent return indicated
 11 for the AGH funded depreciation account, that
 12 is deceptive, because there is a large portion
 13 of the AGH funded depreciation account that
 14 isn't earning 9.9 percent, correct?
 15 MR. RYAN: Objection.
 16 A. I don't know what it's earning.
 17 Q. Right. It's the intercompany loan receivable,
 18 right?
 19 A. It's the note receivable. Right.
 20 Q. The only way to clarify or to correct that
 21 mis-impression is to disclose that there is a
 22 portion of the AGH funded depreciation
 23 account -- or there is a portion of the funded
 24 depreciation bar on page 38 that is not earning
 25 9.9 percent, right?

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1 depreciation account is allocated to AGH, on
 2 page -- if you turn to page -- on this one, on
 3 page 40, there is a return of 9.9 percent for
 4 the AGH funded depreciation account, correct?
 5 A. Um-hum. That's correct.
 6 Q. All right.
 7 A. I just wanted to point out that if you turn to
 8 page 39, the Delaware Valley Obligated Group
 9 does have a funded depreciation component, but,
 10 again, from this report, it's indeterminable as
 11 to what that amount is.
 12 Q. Okay. The 9.9 percent figure on page 40
 13 indicates that whatever portion of the funded
 14 depreciation account that's AGH was earning 9.9
 15 percent, is that correct?
 16 A. That's right.
 17 Q. That's because the funded depreciation accounts
 18 for all the entities were combined and invested
 19 together, is that correct? They all earned the
 20 same amount?
 21 MR. RYAN: Objection.
 22 Q. Is that right?
 23 A. Post --
 24 MR. RYAN: Objection.
 25 A. -- entry into the Master Trust. Following

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1 A. That's right.
 2 MR. RYAN: Objection.
 3 Q. And to disclose that, you have to point out --
 4 you would have to disclose that, instead of
 5 being invested in the funded depreciation
 6 account, it had been lent to affiliates, right?
 7 A. Right.
 8 Q. And that was not done in this report?
 9 A. That's correct.
 10 Q. Okay. Do you have an understanding as to
 11 whether or not the members of the AHERF board
 12 were aware that a substantially large portion
 13 of the AGH funded depreciation account had been
 14 lent and spent to pay for operating expenses in
 15 the East in the 1996 time period?
 16 MR. RYAN: Objection.
 17 A. It would just be speculation.
 18 Q. Well, what is your understanding in that
 19 regard?
 20 MR. RYAN: Objection.
 21 A. Is that the board members were unaware, given
 22 the fact that the question was asked quarterly,
 23 shall I present it in the following manner
 24 denoting that is a note receivable, and the
 25 election was to not bring attention to it.

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1 Q. And your understanding is the reason that the
2 decision was made not to correct the
3 mis-impression about the return on the funded
4 depreciation account is because to do so would
5 require AHERF to disclose to the board members
6 that a substantial portion of the funded
7 depreciation account had been lent to the East?
8 MR. RYAN: Objection.
9 A. Right.
10 Q. Okay. You indicated, in response to the
11 questions of Mr. Antony, that you would have
12 expected Coopers to believe that you were a
13 professional and that you had carefully
14 reviewed the bond documents. Do you remember
15 those questions and answers?
16 A. I do.
17 Q. All right. Do you have an understanding as to
18 whether or not one of the reasons you bring in
19 an outside auditor is to find where you've made
20 inadvertent mistakes? Is that one of the jobs
21 of an outside auditor is to find the cases
22 where you guys made some inadvertent mistakes?
23 MR. RYAN: Objection.
24 A. Well, I think it would be sort of a check and
25 balance just to make certain that the ground

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1 granted their waivers of the violation of the
2 unrestricted fund balance covenant, at that
3 time had AHERF adopted a policy of no more
4 transfers from the AGH funded depreciation
5 account to the East?
6 A. I know that the resolution was approved, but I
7 cannot put a time/date on it. I don't know
8 when that resolution was approved.
9 Q. All right. And if -- do you know when the
10 transfers from AGH to the East stopped?
11 A. I do not.
12 MR. HAMILTON: I have no further
13 questions.
14 THE WITNESS: Come on, just one more.
15 THE VIDEOGRAPHER: With there being
16 no further questions, this deposition is
17 concluded at 5:20.
18 ----
19 (The proceedings were concluded at 5:20 p.m.)
20 ----
21
22
23
24
25

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1 that we have covered was comprehensive, just
2 like a double check.
3 Q. You wouldn't expect Coopers to come in and say,
4 well, you guys say you did a good job checking
5 this, so that's good enough for us? You
6 wouldn't expect that?
7 A. No. I mean, that's not the role of an auditor.
8 Q. What is the role of the auditor?
9 A. My opinion on the role of an auditor is, once
10 they come on-site, to inspect the records and
11 the treatment of the financial assets and
12 liabilities of the organization for accurate
13 presentation and making certain that they're
14 adhering to accounting rules, adherence to bond
15 documents. I can go on.
16 Q. Okay. Let me ask you finally, with respect to
17 the waivers Morgan Guaranty granted on the
18 violation on the unrestricted fund balance in
19 the spring of 1998, at that time, AHERF's board
20 had passed a resolution prohibiting any further
21 transfers from the AGH funded depreciation
22 account to the East, right?
23 MR. RYAN: Objection.
24 A. When did that occur?
25 Q. Well, do you know? At the time that AGH

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1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
2 COUNTY OF ALLEGHENY) SS:
3 I, JoAnn M. Brown, RMR, a Court Reporter and
4 Notary Public in and for the Commonwealth of
5 Pennsylvania, do hereby certify that the witness,
6 SUSAN GILBERT, was by me first duly sworn to testify
7 to the truth; that the foregoing deposition was taken
8 at the time and place stated herein; and that the
9 said deposition was recorded stenographically by me
10 and then reduced to printing under my direction, and
11 constitutes a true record of the testimony given by
12 said witness.
13 I further certify that the inspection, reading
14 and signing of said deposition were NOT waived by
15 counsel for the respective parties and by the
16 witness.
17 I further certify that I am not a relative or
18 employee of any of the parties, or a relative or
19 employee of either counsel, and that I am in no way
20 interested directly or indirectly in this action.
21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office this 18th day of
23 October, 2002.
24 _____
25 Notary Public

SUSAN GILBERT

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1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
 2 COUNTY OF ALLEGHENY) S H E E T

3 I, SUSAN GILBERT, have read the foregoing pages
 4 of my deposition given on Tuesday, October 15, 2002,
 5 and wish to make the following, if any, amendments,
 6 additions, deletions or corrections:

7 Page/Line Should Read Reason for Change
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19

20 In all other respects, the transcript is true and
 21 correct.

22 _____
 23 SUSAN GILBERT

24 Subscribed and sworn to before me this
 25 _____ day of _____, 2002.

 Notary Public
 AKF Reference No. JB72402

Gumberg Dep.

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 WESTERN DISTRICT OF PENNSYLVANIA

3 - - - -

4 THE OFFICIAL COMMITTEE OF)
5 UNSECURED CREDITORS OF)
6 ALLEGHENY HEALTH, EDUCATION &)
7 RESEARCH FOUNDATION,)

8 Plaintiff,)

9 -vs-)

Civil Action
No. 00-684

10 PRICewaterhouseCOOPERS, L.L.P.)

11 Defendant.)

12 - - - -

13 VIDEOTAPE DEPOSITION OF: IRA GUMBERG
14 VOLUME II

15 - - - -

16 DATE: October 3, 2003
17 Friday, 8:58 a.m.

18 LOCATION: KIRKPATRICK & LOCKHART
19 Oliver Building, 2nd Floor
20 535 Smithfield Street
21 Pittsburgh, PA 15222

22 TAKEN BY: Defendant

23 REPORTED BY: Heidi H. Willis, RPR, CRR
24 Notary Public
25 AKF Reference No. HW77545

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1 VIDEOTAPE DEPOSITION OF IRA GUMBERG, VOLUME II,
2 a witness, called by the Defendant for examination,
3 in accordance with the Federal Rules of Civil
4 Procedure, taken by and before Heidi H. Willis, RPR,
5 CRR, a Court Reporter and Notary Public in and for
6 the Commonwealth of Pennsylvania, at the offices of
7 Kirkpatrick & Lockhart, Oliver Building, 535
8 Smithfield Street, Pittsburgh, PA 15222, on Friday,
9 October 3, 2003, commencing at 8:58 a.m.

10 APPEARANCES:
11 FOR THE PLAINTIFF:
12 James M. Jones, Esq.
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15 31st Floor
16 Pittsburgh, PA 15219
17 412-258-2300

18 FOR THE DEFENDANT:
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21 Worldwide Plaza
22 825 Eighth Avenue
23 New York, NY 10019
24 212-474-1986

25 FOR THE WITNESS:
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KIRKPATRICK & LOCKHART
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Pittsburgh, PA 15222
412-344-6500

ALSO PRESENT:
Ken Ingersoll, Videographer

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1 -----
2 P-R-O-C-E-E-D-I-N-G-S
3 -----

4 THE VIDEOGRAPHER: This is day two of
5 the deposition of Ira Gumberg. The witness is
6 already sworn in. We are now going back on the
7 record. The time is 8:58 a.m.

8 -----
9 EXAMINATION (CONT'D)
10 -----

11 BY MR. BROOKS:

12 Q. Good morning, Mr. Gumberg.

13 A. Good morning.

14 Q. We spent some time yesterday looking at a
15 Coopers & Lybrand management or comment letter
16 I should say, and I want to ask a couple
17 follow-up questions about your experience with
18 Coopers & Lybrand.

19 Was Bill Buettner or any
20 representative of Coopers & Lybrand invited to
21 AHERF parent board meetings as a general
22 matter?

23 MR. JONES: Object to foundation and
24 to form.

25 A. I do not recall Bill at a parent board meeting.

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1 Q. Was he invited to AGH board meetings?

2 MR. JONES: Same objection.

3 A. I do not recall him at an AGH board meeting.

4 Q. Did he attend AGH resource management committee
5 meetings?

6 MR. JONES: Same objection.

7 A. The answer to that as well would be no, to the
8 best of my recollection, except for when I
9 asked for a special Saturday morning session,
10 which I might add was my first time meeting
11 Bill Buettner.

12 Q. Okay. And --

13 A. Excuse me, that would have been the second time
14 I met Bill Buettner, the first time being at
15 the -- first time I attended an audit meeting
16 on October the 15th was my first time meeting
17 Bill Buettner.

18 Q. And the second time was shortly thereafter at
19 this special meeting?

20 A. I don't remember. I think it was in -- I think
21 in -- correct, it may have been a couple months
22 later.

23 Q. Okay. Other than that special meeting, did you
24 ever attend any meeting of any AHERF board at
25 which Mr. Buettner was present?

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1 A. I don't believe so.
 2 Q. And let me correct my question. Other than
 3 that special meeting and the audit committee
 4 meeting that you referred to, did you ever
 5 attend any AHERF board or committee meeting at
 6 which Mr. Buettner was present?
 7 A. I do not believe so.
 8 Q. At either of those two meetings you did attend
 9 at which Mr. Buettner was present, did you ask
 10 Mr. Buettner any questions?
 11 A. At the audit --
 12 Q. Sorry, why don't we hold until he gets that,
 13 and we'll read back the question.
 14 MR. McCLENAHAN: Sorry.
 15 MR. BROOKS: Why don't you read back
 16 the question, if you would.
 17 ---
 18 (The record was read back by the Reporter.)
 19 ---
 20 A. I do not believe that I asked Mr. Buettner
 21 questions at the October 15th audit meeting,
 22 but I cannot say for sure. I think -- I think
 23 I may not have.
 24 I did, because I chaired the meeting,
 25 the Saturday morning session, so there would

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1 have been a number of questions I would have --
 2 I would have asked of him.
 3 Q. Okay. Let me hand you minutes of that October
 4 15th, 1997 audit committee meeting which had
 5 been be previously marked as Exhibit 2019 in
 6 this litigation.
 7 And, Mr. Gumberg, do these appear to
 8 be the minutes of the meeting you were
 9 referring -- of the audit committee meeting you
 10 were referring to?
 11 A. It appears to be.
 12 Q. And this meeting was the first time you met
 13 Mr. Buettner in any context?
 14 A. Yes.
 15 Q. If you would turn in this document into page 4,
 16 Bates No. ending in 814, and three sentences in
 17 at the top of that page you'll see a sentence
 18 that reads, quote, Following discussion
 19 regarding the outstanding balances in accounts
 20 payable and expected adjustments which are
 21 intended to be paid to AGH funded depreciation
 22 account, and then it continues.
 23 At that audit committee meeting on
 24 October 15, 1997, was there a discussion of the
 25 fact that large loans had been made from the

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1 AGH funded depreciation account to the Delaware
 2 Valley entities?
 3 A. Yes, sir.
 4 Q. And --
 5 MR. McCLENAHAN: Mr. Gumberg, I think
 6 it might be helpful if you at least skimmed the
 7 section beginning with B over to page 4 where
 8 Mr. Brooks is asking questions so you get --
 9 THE WITNESS: Okay.
 10 MR. McCLENAHAN: -- a sense of the
 11 context of the question.
 12 ---
 13 (The witness reviewed the Exhibit.)
 14 ---
 15 THE WITNESS: Okay. I think you
 16 asked a question if there had been discussion
 17 about transfers.
 18 BY MR. BROOKS:
 19 Q. And I think you answered that question. I
 20 think there's no question pending.
 21 My question now is: When did you
 22 personally first become aware that substantial
 23 loans may have been made from the funded
 24 depreciation accounts of Allegheny General to
 25 DVOG entities?

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1 A. A few days -- a day before this meeting, which
 2 would have been I believe on the 14th.
 3 Q. Okay.
 4 A. I came in for a pre-meeting, which would have
 5 been a standard, a routine with me where any
 6 type of a resource management committee meeting
 7 that I would be participating in or chairing,
 8 that there would be a pre-meeting, and that at
 9 two o'clock this same day there was a resource
 10 management meeting. So that was the reason for
 11 my being there the day earlier was for that
 12 preparatory session.
 13 The presenters that would be
 14 presenting at that meeting were all in
 15 attendance, and then they excused themselves or
 16 Tony Sanzo I should say excused everybody
 17 except himself and Joe Dionisio, and then Joe
 18 Dionisio and Tony advised me that in their
 19 opinion there were substantial transfers that
 20 had been taking place and that they may not be
 21 presented on the balance sheet as -- as
 22 transfers due from the east back to the west,
 23 but instead I believe were labeled as
 24 investments.
 25 I had a -- I then excused Joe

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1 Dionisio and only spoke one-on-one with Tony
2 Sanzo. I told Tony that I wanted to get to the
3 bottom of this immediately, and he said that
4 that was the reason why he came to me, that he
5 thought that I would be the personality, the
6 individual that would deal with this, and I
7 asked him if he would call Sherif and tell
8 Sherif that I'm aware and tell Sherif I'd like
9 to see him.

10 I received a call back at my office
11 sometime that afternoon asking if I could meet
12 Sherif at 11:30 this same day at Sherif's
13 office at the AGH enterprise.

14 MR. McCLENAHAN: The same day now
15 meaning the 15th?

16 A. The next day, the 15th, the audit committee
17 meeting, the 15th, and then I met with Sherif
18 that morning, or at that 11:30 meeting.

19 Q. And what was the substance of your conversation
20 with Mr. Abdelhak?

21 A. Substance -- substance of that was that I
22 discussed with Sherif rather directly what I
23 had learned. He at first told me he thought
24 that I was incorrect in terms of the way it was
25 presented in the balance sheet. The meeting

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1 became a little bit heated from his perspective
2 in the sense that he thought I didn't
3 understand and that I was completely off base
4 in terms of the accounting of this.

5 I told him that I might be, an
6 accountant I'm not, but that I do know as a
7 trustee to me investments to me meant General
8 Motors, 3M, IBM, it didn't mean invested in our
9 own shop, particularly on the other side,
10 meaning the east side of our enterprise, and I
11 thought that most board members would feel the
12 same way.

13 He then said that he understood, and
14 I recommended to him that I thought the -- that
15 he should come before his board at this twelve
16 o'clock meaning and discuss it.

17 Q. And that is then what happened at that meeting?

18 A. And that is then what happened at that meeting.

19 Q. Let me also put in front of you what's been
20 previously marked, in fact, you probably have
21 it in your stack somewhere, this is the --
22 Ms. Gordon's shorthand, the transcription of
23 Ms. Gordon's shorthand notes of the October 15,
24 1997 meeting which is labeled as Exhibit 1659.
25 I'll save time by handing you --

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1 A. Thank you.

2 Q. -- another copy. I have one more here.

3 MR. McCLENAHAN: I got it.

4 Q. And, again, you can decide how much context you
5 want to look at. I'm going to direct your
6 attention to some of the discussion that is
7 approximately recorded towards the top of page
8 7.

9 A. I'm just going to ask for your help for page 7.

10 MR. McCLENAHAN: This is Western
11 Pennsylvania does a better job?

12 MR. BROOKS: That is the page and
13 then the discussion that follows underneath
14 that.

15 MR. McCLENAHAN: Well, help us out
16 here. Are you going to be talking about the
17 funded depreciation issue or the issue that
18 precedes it on --

19 MR. BROOKS: The funded depreciation
20 issue.

21 MR. McCLENAHAN: Okay. Ira, why
22 don't you start then at the top of page 7 and
23 read down until Roman numeral III C.

24 - - - -

25 (The witness reviewed the Exhibit.)

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1 - - - -

2 BY MR. BROOKS:

3 Q. Okay. My first question is at this meeting was
4 it primarily Mr. Abdelhak or Mr. Buettner who
5 explained to the AHERF audit committee the
6 nature of these loans and how they were
7 accounted for?

8 A. As I recall, I think Sherif set the -- set the
9 foundation for the discussion, the fact that
10 there had been these loans and transfers, and I
11 recall as well some specifics from Dave
12 McConnell that was also explained.

13 And the open question in my mind
14 after hearing all dialogue was when will they
15 be paid back, and I recall asking that
16 question, and I believe the answer that was
17 given to me was going to be within 12 to 18
18 months.

19 Q. I take it from these notes that Mr. Buettner
20 either spoke or responded to questions in the
21 course of this discussion. Can you describe to
22 me what his role in this discussion was?

23 A. I can't recall.

24 Q. Okay. All right. In the course of this
25 meeting, do you believe that the AHERF audit

<p style="text-align: right;">Page 250</p> <p>1 committee was accurately advised as to the</p> <p>2 amount of loans that had been made from AGH,</p> <p>3 from the AGH funded depreciation accounts?</p> <p>4 MR. JONES: Object to foundation and</p> <p>5 form.</p> <p>6 A. I'm not sure, reading -- reading the page you</p> <p>7 asked me to read, I'm not sure I even</p> <p>8 understand when the -- the balances of AGH</p> <p>9 funded depreciation June 30 was not used for</p> <p>10 payments of payables less than 50 million,</p> <p>11 Buettner responds 58 million left behind.</p> <p>12 I don't know how that ties in. I do</p> <p>13 know that at a later date, I don't recall when,</p> <p>14 the amount of transfers, as I remember, was</p> <p>15 larger.</p> <p>16 Q. Larger than?</p> <p>17 A. Than what was I believe explained at that</p> <p>18 meeting. I think, as I recall, the number that</p> <p>19 was transferred turned out to be something in</p> <p>20 the 90 million-ish range.</p> <p>21 Q. Do you recall what the relationship between</p> <p>22 that and the reference to an intercompany 112</p> <p>23 million by Mr. Edelman in these notes was or</p> <p>24 might be?</p> <p>25 A. I don't. I do actually remember Harry asking</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. There is in this half page we've looked at,</p> <p>2 there are two comments noted by Mr. Buettner's</p> <p>3 name. Do you have any recollection that he</p> <p>4 declined to answer any questions that anybody</p> <p>5 asked him?</p> <p>6 A. No, I don't recall a decline.</p> <p>7 Q. Do you believe that he was not forthcoming in</p> <p>8 answering questions that anybody asked him?</p> <p>9 MR. JONES: Object to foundation.</p> <p>10 A. I also could not say that he was not</p> <p>11 forthcoming.</p> <p>12 Q. About the time of the October 15 AHERF audit</p> <p>13 committee meeting, did anybody bring this same</p> <p>14 issue to the attention of the AGH board?</p> <p>15 A. Well, the --</p> <p>16 MR. JONES: Object to foundation.</p> <p>17 A. -- yes, because at the two o'clock meeting</p> <p>18 Sherif spoke again and addressed a huge</p> <p>19 auditorium, because it was the consolidated --</p> <p>20 yes, it was the -- it was a consolidation of</p> <p>21 resource management committees across the whole</p> <p>22 global system that had been invited in to the</p> <p>23 auditorium, not because of the subject, but</p> <p>24 whatever the agenda was that they were -- we</p> <p>25 were discussing.</p>
<p style="text-align: right;">Page 251</p> <p>1 the question where it showed up, and I do</p> <p>2 remember an answer being given that it was in</p> <p>3 the elimination column.</p> <p>4 Q. And --</p> <p>5 A. That's all I can recall.</p> <p>6 Q. -- at that meeting was it explained</p> <p>7 sufficiently to your satisfaction?</p> <p>8 A. At the time I would have thought that I</p> <p>9 understood, and I might add that following that</p> <p>10 meeting thereafter, the balance sheets</p> <p>11 reflected differently. They reflected the fact</p> <p>12 that there had been transfers to the east, and</p> <p>13 I'm not sure, I think they were maybe footnoted</p> <p>14 sizably on the balance sheet.</p> <p>15 Q. There is a note on this page in Exhibit 1659 by</p> <p>16 Mr. McConnell's name that reads, quote, Bill</p> <p>17 has agreed that he needs to indicate that some</p> <p>18 of the money is in intercompany receivables.</p> <p>19 Do you recall any comments from</p> <p>20 Mr. Buettner to the effect that the accounting</p> <p>21 for some of these transfers needed to be</p> <p>22 changed?</p> <p>23 A. I do not. I don't wish to editorialize, but</p> <p>24 Bill Buettner came across to me as a rather</p> <p>25 meek individual. I don't recall much dialogue.</p>	<p style="text-align: right;">Page 253</p> <p>1 And he took the first 10 or so</p> <p>2 minutes of that meeting and spoke, and I might</p> <p>3 add I recall him speaking rather articulately</p> <p>4 about the subject, and board members were</p> <p>5 there, physician members who were members of</p> <p>6 committees were there, and it would have been</p> <p>7 the first time that physician members would</p> <p>8 have heard this, and there was a great deal of</p> <p>9 surprise.</p> <p>10 Q. And at that large meeting Mr. Abdelhak laid out</p> <p>11 the nature and size of these transfers clearly?</p> <p>12 A. He did.</p> <p>13 Q. Was it your judgment at the time that anything</p> <p>14 about how these transfers had been done was</p> <p>15 improper on the part of management?</p> <p>16 MR. JONES: Object to form.</p> <p>17 MR. McCLENAHAN: How they had been</p> <p>18 done or -- is that your question?</p> <p>19 MR. BROOKS: Let me reask it.</p> <p>20 Q. Was your judgment at the time that management</p> <p>21 had acted improperly in making these loans from</p> <p>22 the funded depreciation to the DVOG entities?</p> <p>23 MR. JONES: Same objection.</p> <p>24 A. Is my attorney -- am I okay to answer?</p> <p>25 MR. McCLENAHAN: Yes.</p>

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- 1 A. I don't believe that I would have viewed --
2 that I viewed them as improper. I think the
3 only part that was of concern to me was the
4 labeling on the balance sheet and the fact that
5 I learned about it kind of last minute, and as
6 you know, I learned about it through a prep
7 session.
- 8 Q. Did the fact that you only learned about it at
9 the last minute raise concerns in your mind
10 about whether you could trust top management?
- 11 A. That's a -- that's a fair question. My
12 judgment at the time was that I watched Sherif
13 come before his board, respond appropriately.
14 If he had not at the time, I would have had
15 great concern, but I thought he had cleared
16 himself appropriately, and I felt that maybe
17 all I was able to do in the process as being
18 one of his board members was just help him do
19 the right thing by his institution.
- 20 Q. Did the fact of these transfers and the way
21 that you learned about them and the way they
22 had been recorded on the book cause you to
23 consider whether top management of AHERF should
24 be changed?
- 25 A. It did not reach that level in my mind at that

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- 1 time.
- 2 Q. What action, if any, did the AHERF audit
3 committee take in connection with this issue
4 once it was informed about it at the October 15
5 meeting?
- 6 A. Roger, I don't recall exactly the action taken,
7 but there was more proactive action taken at a
8 meeting of the AHERF finance committee a few
9 weeks later.
- 10 MR. BROOKS: Let me mark as Exhibit
11 2051 a one-page document bearing the Bates No.
12 HE 1373 titled Report From the Special Task
13 Force Reviewing Intercompany Loans.
14 - - - -
15 (Exhibit 2051 marked for identification.)
16 - - - -
- 17 BY MR. BROOKS:
- 18 Q. And let me ask you first, Mr. Gumberg, if you
19 recognize this document.
20 - - - -
21 (The witness reviewed the Exhibit.)
22 - - - -
- 23 A. I believe I -- I believe I did.
- 24 Q. Did you write this report?
- 25 A. I don't recall.

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- 1 Q. This report appears to refer to a meeting of a
2 special task force of resource management
3 committee on April 18, 1998, of which you were
4 chair.
- 5 Can you describe for me what that
6 special committee -- special task force was and
7 how it came into existence?
- 8 A. Yes, be happy to, but I need to take you back a
9 little bit.
- 10 Q. Okay.
- 11 A. Two weeks after the audit meeting, which I
12 believe was October 15th, there was a finance
13 meeting of the AHERF -- AHERF finance board.
14 MR. McCLENAHAN: Committee.
- 15 A. Committee, thank you. And there at that
16 meeting I believe that was when a resolution
17 was being asked to be approved that would
18 have -- that would have approved an
19 intercompany transfer as high as \$150 million.
- 20 And having heard this at the meeting,
21 I thought it was appropriate that I speak out,
22 and I did, and I -- I'm trying to go back in
23 life now, but I believe that I spoke about the
24 fact that in that two-week period that I had
25 felt a we/they issue had developed between our

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- 1 institution, that now we were a west and an
2 east, we were not one enterprise, that it was
3 the east that was burning the money, it was the
4 west that had been earning the money. This is
5 in the mentality of the physicians I'm
6 referring to, and I felt a great schism
7 developing, whether correct or incorrect.
- 8 I also believe that I thought it was
9 inappropriate to have an internal line like
10 this set up without taking advantage of bankers
11 who sat on our boards who understood the
12 banking business, the lending business, and I
13 even said, and I certainly did not imply myself
14 because I'm not a banker, and that I felt that
15 a special committee should be set up to watch
16 over this.
- 17 They took my advice. They set up a
18 special committee. It was chaired by Dave
19 Barnes I believe. I don't remember the name of
20 the committee, Roger, but it was -- it was the
21 committee that would watch to be sure that
22 whatever amounts were lent, that there was --
23 that the appropriate concentration in any one
24 entity was what it should be, that the payback
25 period should be what it should be, and that

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1 they would be watching over internal loans.
 2 Q. Were you on that committee?
 3 A. I was asked to be on that committee, and I
 4 agreed to be on that committee.
 5 Then what happened was we started to
 6 track at the resource management level, western
 7 level under my chairmanship, our dollars out
 8 and our dollars back. Then what happened was
 9 we determined that we should set up a special
 10 committee, that's this task force that I
 11 chaired, and it was made up of key members of
 12 my -- of my resource management committee,
 13 and -- and it was to really bore into the
 14 transfers. It was also to bore into the
 15 repatriation process, and then I think that
 16 leads to this memo.
 17 Q. Okay.
 18 A. And then subsequently that led to questions we
 19 started to receive. As we were scorecarding
 20 the reduction in our amounts outstanding, we
 21 started to notice that some of the reductions
 22 were coming in the form of noncash, and frankly
 23 we didn't understand it, and that was my reason
 24 for calling a special meeting that would --
 25 that would include the Coopers engagement

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1 partner, as well as the management, the
 2 financial people from management to help
 3 explain what it was.
 4 Q. Did the task force or subcommittee chaired by
 5 Mr. Barnes ever meet?
 6 A. The banking committee as it were?
 7 Q. As you described it.
 8 A. I don't think that it did. It did have a
 9 provision that allowed transfers to take place
 10 if they were in the normal course of business
 11 as previously approved by the budget and if
 12 they were under \$10 million.
 13 Q. Do you have any understanding as to why that
 14 committee never met?
 15 A. I do not know, but I'm prepared to help you
 16 further with another answer if you like.
 17 Q. Did you ever suggest that that committee should
 18 meet?
 19 A. I don't recall if I -- I may have. I may have.
 20 I don't recall.
 21 Q. The -- was the April 18th meeting that we are
 22 looking at a report about that second meeting
 23 with Bill Buettner that you described earlier?
 24 A. My second meeting with Bill Buettner.
 25 Q. So between the October 15th AHERF audit

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1 committee meeting and the April 18, 1998 task
 2 force meeting, you never were in a meeting with
 3 Mr. Buettner?
 4 A. I don't believe I was.
 5 Q. And the focus of the April 18 meeting, why
 6 don't you describe for me what the focus of
 7 that meeting at which Mr. Buettner was present
 8 was.
 9 A. I think that I -- I'll answer it again. I
 10 think the focus was as it related to the
 11 payback of intercompany loans, that part that
 12 was noncash, that we were unable to understand.
 13 Q. Well, let me ask then before you get to the
 14 payback, did you also as part of this task
 15 force try to understand in more detail the
 16 nature of the loans that had been made out of
 17 the funded depreciation?
 18 A. We were watching those on an ongoing basis and
 19 I believe understood those.
 20 Q. Okay. At this meeting, did Mr. Buettner give
 21 any sort of presentation or explanation?
 22 A. Oh, sure.
 23 Q. What was it that he discussed to the task
 24 force?
 25 A. Oh, I can't -- I can't remember.

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1 Q. Did you find him -- the information that
 2 Mr. Buettner gave at that meeting to be
 3 accurate?
 4 A. I believe so, yes.
 5 Q. And have you ever learned anything to the
 6 contrary?
 7 A. I have not.
 8 Q. Did you find him willing to answer whatever
 9 questions the committee members had?
 10 A. Yes.
 11 Q. The last paragraph of this report begins,
 12 quote, The task force was generally satisfied
 13 with the explanations, but nonetheless agreed
 14 to continue to monitor these transactions in
 15 the future, and it continues.
 16 Is that an accurate summary of your
 17 own state of mind after this meeting on April
 18 18th?
 19 A. Yes, and subsequently I reported this to both
 20 my committee and I believe to the board.
 21 MR. JONES: I'm sorry, which board?
 22 THE WITNESS: That would have been
 23 the west board, Jim.
 24 MR. JONES: Thank you.
 25 Q. And you described earlier the we/they mind-set

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1 that you observed on the part of some of the
2 doctors. Was it your view that significant
3 intercompany loans were consistent with the
4 integrated system strategy that AHERF was
5 pursuing?
6 MR. JONES: Object to form.
7 A. I think the answer to that question is yes to a
8 certain point.
9 Q. Did you ever come to a particular conclusion
10 about what that point was?
11 A. I think that I did.
12 Q. And what was your conclusion?
13 A. That if we were going to exceed this \$150
14 million range, that we needed to circumscribe
15 funds and stop allowing any future transfers,
16 and, in fact, I spoke up. I had our resource
17 management committee authorize a resolution to
18 do just that, and then I took it to the board
19 of directors, and I asked the board of
20 directors to do the same, which it also was
21 moved by me and I believe seconded by Sherif.
22 Again, the board being the western board.
23 Q. The AGH board?
24 A. Yes.
25 Q. So I'm clear on the chronology, at the October

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1 15th AHERF audit committee meeting,
2 Mr. Abdelhak and Mr. Buettner explained to the
3 committee intercompany --
4 A. And the financial officer.
5 Q. Mr. McConnell?
6 A. Right.
7 Q. -- explained to the committee the intercompany
8 transfers that had happened during fiscal 1987;
9 correct?
10 MR. JONES: '97.
11 A. I'd like to -- I'd like to just maybe cast that
12 a little differently.
13 Q. Okay.
14 A. I believe Sherif presented it. I believe
15 McConnell added to the presentation, and I
16 believe, as I recall at least, that Buettner
17 answered questions.
18 Q. The focus of that discussion and explanation
19 was on transfers that had happened during
20 fiscal 1997; correct?
21 A. Transfers that had happened.
22 Q. That had happened, and then following that, the
23 AHERF board approved up to an additional \$150
24 million worth of --
25 A. No, inclusive of. 150 I believe was -- the

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1 difference of whatever it was and 150, it was
2 not to go over 150.
3 Q. So it was functionally something like a credit
4 line that was not to exceed --
5 A. Correct, intercompany credit loan of 150.
6 Q. Okay.
7 MR. JONES: In total.
8 THE WITNESS: In total.
9 Q. Mr. Gumberg, how did you learn of the decision
10 that AHERF would acquire The Graduate
11 Hospitals?
12 A. I attended a meeting in December of '96. I
13 believe that was when I concede that I was on
14 the AHERF board. They presented as part of an
15 agenda the fact that they had already an
16 agreement -- I can't remember if it was they
17 had acquired or if they had an agreement to
18 acquire The Graduate Hospital system, and I
19 remember some initials. It wasn't called
20 Graduate, it was an entity called SD something.
21 Q. SDN?
22 A. Okay, SDN, and that was my first -- my first
23 knowledge.
24 Q. Well, let me ask you this: Back in August this
25 acquisition had been discussed in news articles

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1 in the newspaper in Pittsburgh and
2 Philadelphia, does that refresh your
3 recollection in any way as to whether you heard
4 about this before the December board meeting?
5 A. It doesn't.
6 Q. Okay. Did you feel when you learned about this
7 in December of '96 that it was -- that you were
8 learning about it as a fait accompli?
9 MR. JONES: Object to form.
10 A. I would say so, yes.
11 MR. BROOKS: Object to form or the
12 language?
13 Q. Did you have any concerns that learning about
14 it at that stage made it possible for you to
15 carry out your fiduciary duties as a trustee of
16 AHERF?
17 A. No.
18 Q. Did you have any concern that you as a trustee
19 had not been consulted before a decision had
20 been made?
21 A. No, I don't think I felt that way.
22 Q. Did any other trustees express to you any
23 concerns on their part that the trustees should
24 have been consulted, that the board should have
25 had an opportunity to consider this at an

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1 Would you tell me what you see as the
 2 role of the volunteer trustee for a
 3 not-for-profit organization like AHERF?
 4 A. I think it's as an oversight capacity, and it
 5 would be to rely heavily upon management
 6 reporting, management's presentations, and to
 7 also to rely on I believe, through the audit
 8 committee of the board, rely on our external
 9 auditors for financial reporting.
 10 Q. You relied on outside professionals like
 11 auditors and lawyers to help you discharge your
 12 duties to the organization?
 13 A. Yes, sir.
 14 Q. In fact, you also I think testified that you
 15 engaged outside consultants of other varieties
 16 during your time of board service?
 17 A. Yes.
 18 Q. The role of a volunteer trustee, is it a
 19 full-time job or something less than that?
 20 A. It is -- it is not a full-time job.
 21 Q. What role did Coopers & Lybrand as outside
 22 auditors, as you understood it, play in
 23 connection with the review and presentation of
 24 AHERF's financial statements?
 25 A. I understood them to be the primary auditor,

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1 perhaps the only auditor of the system. Their
 2 role was to develop a -- a scope and an
 3 approach to the audit of our system, to
 4 understand the operation of our business so
 5 they could tailor their audit approach.
 6 Q. And ultimately that would lead to some, as you
 7 understood it, opinion on the financial
 8 statements that had been presented to them; is
 9 that fair?
 10 A. Yes, an opinion that would be used by not only
 11 our board, but other outsiders, such as banks
 12 and debt institutions.
 13 Q. Trade creditors?
 14 A. Trade creditors, yes.
 15 Q. As a part of their work, you considered this a
 16 check on management's internal financial
 17 statement preparation?
 18 A. I understood it to be internal controls as
 19 well.
 20 Q. An evaluation by the auditors of internal
 21 controls?
 22 A. An evaluation, yes.
 23 Q. Of internal controls?
 24 A. And that if there were internal controls that
 25 were weak or designs that were missing, that

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1 they would be reported.
 2 Q. And my question -- I understand your answer, my
 3 question is a little different. It is you
 4 testified earlier that you received I think on
 5 the order of quarterly internal unaudited
 6 financial statements; is that right?
 7 A. Yes, sir.
 8 Q. And those you understood to be prepared by
 9 whom?
 10 A. Management.
 11 Q. Internal financial management at AHERF?
 12 A. Yes.
 13 Q. The auditor's role, the outside auditor's role,
 14 the role filled here by Coopers & Lybrand, was
 15 an independent check of that financial
 16 department's preparation of financial
 17 statements in your view?
 18 A. Yes. I'm just not sure if their review was a
 19 quarterly review like I'm used to in a public
 20 company where there's a negative assurance or
 21 an annual.
 22 Q. I understand. To the best of your
 23 recollection, you got annual audited financial
 24 statements while you were a member of AHERF
 25 boards or committees?

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1 A. Yes, sir.
 2 Q. And what is the importance to the enterprise
 3 and to the board of a clean audit opinion for
 4 the fiscal year while you were serving on AHERF
 5 boards or committees?
 6 A. I'm not sure the stages of other than clean,
 7 but less than clean opinion I believe would be
 8 a serious blemish and could cause problems in
 9 the financial markets.
 10 Q. Did the clean opinions -- let me strike this,
 11 strike that.
 12 You don't recall ever having AHERF
 13 received anything less than a clean opinion
 14 while you were affiliated; is that right?
 15 A. No, sir, I do recall. I believe we received
 16 when KPMG came into the company --
 17 MR. McCLENAHAN: He -- I'm sorry, I
 18 interrupted. Go ahead.
 19 A. -- when KPMG came into the company, the
 20 auditor, at a later date, I believe it was
 21 KPMG, I think there was something referred to
 22 as a going concern. I believe that's less than
 23 a clean. I'm not sure. It's not my specialty.
 24 Q. I understand, and my question I think can be
 25 better phrased.

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1 Before bankruptcy in roughly July or
2 August of '98, it is your recollection that
3 AHERF had never received anything less than an
4 unclean opinion in its yearly audits conducted
5 by Coopers & Lybrand; is that right?

6 A. That's correct.

7 Q. And those clean opinions, did they help you in
8 any way gauge the validity or accuracy of the
9 internal financial statements you were getting?

10 A. I believe so. I believe that they did give an
11 indication that internal controls were
12 satisfactory.

13 Q. You as a -- when you -- strike that.

14 Is it your recollection that you
15 typically, and I know we have an issue in 1997,
16 for fiscal year 1997, but do you recall
17 typically receiving the audited financial
18 statements from the auditors, Coopers &
19 Lybrand, in the fall of the calendar year?

20 A. Yes.

21 Q. On an annual basis throughout your board and
22 committee service?

23 A. Yes.

24 Q. And when you got those audited financial
25 statements typically in the fall of the year --

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1 A. Yes.

2 Q. -- you reviewed them and relied on their
3 content?

4 A. Yes.

5 Q. How did you use the statements, not in your
6 review, but in your oversight role as a
7 trustee?

8 A. I think the best way to say I used them was
9 from a comfort perspective, the fact that they
10 were certified by a quality firm and gave
11 comfort to me as a board member that there
12 were -- that, in fact, the opinion was clean.

13 Q. Did you use the audited financial statements to
14 help gauge the financial performance of the
15 enterprise generally?

16 A. I think that it validated the results. The
17 results themselves I think is where I would
18 have looked at performance.

19 Q. And the audited financial statements gave you a
20 validation for the accuracy of the results I
21 think is what you are saying?

22 A. Yes, sir.

23 Q. Did you use these audited financial statements
24 to help you make decisions about how to oversee
25 the business, the actual results in them?

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1 A. I'd have to say yes.

2 Q. Was accurate financial information about the
3 performance of AHERF important to you,
4 especially given the challenging market
5 conditions that you and Mr. Brooks discussed
6 earlier in this deposition?

7 A. I think any -- I think any presentation, any
8 report coming out of an institution is
9 important to me.

10 Q. And these financial statements would be such a
11 report?

12 A. Absolutely.

13 Q. Did you use the financial statements we have
14 been discussing to help measure the financial
15 performance of specific initiatives, like the
16 AIHG physician practice acquisition or other
17 hospital acquisitions?

18 A. Yes. Again, the answer is yes, but the
19 presentation given to me as a board member by
20 management quarterly and then at the end of the
21 year would have been the same type of -- board
22 would use the same information.

23 Q. Was there anything you ever got from reading
24 the audited financial statements at year-end or
25 post year-end that led you to question the

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1 accuracy of the internal financial statements
2 at AHERF?

3 A. No, sir.

4 Q. When you were attempting to measure the
5 performance of financial management at AHERF,
6 did you use financial results as a part of that
7 monitoring and gauging --

8 A. Yes, sir.

9 Q. -- mechanism?

10 A. Yes.

11 Q. And those financial results were portrayed in
12 both the internal financial statements and the
13 annual audited financial statements?

14 A. And portrayed in the form of performance given
15 to us so we could track against where we were
16 against budget for that period of time.

17 Q. Okay. So there's three sources of tracking I
18 think you are telling me: there's internal
19 financial statements, the annual audited
20 financial statements, and then performance
21 against plan or budget?

22 A. Plan or budget presented by management.

23 Q. So -- but I'm right that there's all three of
24 those?

25 A. Yes, sir.

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1 Q. You spoke briefly about the reliance on the
2 auditors to prepare an appropriate plan and
3 scope for their work each year. Do you recall
4 that just moments ago?

5 A. Yes.

6 MR. JONES: I'm going to ask our
7 court reporter to mark for us an exhibit that I
8 don't think has been marked in this litigation.

9 - - - -

10 (Exhibit 2056 marked for identification.)

11 - - - -

12 BY MR. JONES:

13 Q. Mr. Gumberg, I've handed you what the court
14 reporter has kindly marked as Exhibit 2056
15 which I believe you'll find to be minutes of a
16 board meeting of the Allegheny Health,
17 Education and Research Foundation held on
18 Friday, June 21, 1996, which indicate that you
19 were a member and present.

20 Is that at least what this document
21 purports to be?

22 A. Yes, it does.

23 Q. I'm going to ask you to flip briefly for me to
24 the page that has -- that ends -- I'm sorry,
25 the page that has a Bates No. at the bottom

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1 A. Again, for the period of time that I was on the
2 bigger board, yes.

3 Q. I understand, and I know there's a difference
4 of recollection and documentation as to when
5 you actually sat on the big board, and I think
6 it's at least in my mind from your testimony
7 that your recollection is that you joined the
8 full board in December of '96, or perhaps the
9 turn of the year '97, but we apparently have
10 records at least that indicate --

11 A. Right.

12 Q. -- otherwise; is that right?

13 A. That's correct.

14 Q. So even if you didn't -- and you don't have a
15 current recollection whether or not you
16 received these minutes or attended this
17 meeting; is that fair to say?

18 A. I do not have a recollection.

19 MR. JONES: I'm going to ask the
20 court reporter to mark for us one more exhibit.

21 - - - -

22 (Exhibit 2057 marked for identification.)

23 - - - -

24 BY MR. JONES:

25 Q. Mr. Gumberg, I think the court reporter has

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1 right-hand corner which ends 200?

2 A. Okay.

3 Q. And under the Report from the Audit Committee,
4 I think you'll find text that indicates that
5 Mr. Barnes, who I believe was then perhaps
6 chair of the audit committee, presented the
7 Coopers & Lybrand proposed AHERF audit plan for
8 fiscal year 1996; is that right?

9 A. IV (A) right -- or VI (A)?

10 Q. Yes.

11 A. Yes.

12 Q. And is that your recollection that the full
13 board was presented with the Coopers & Lybrand
14 audit plan for the fiscal year in the spring or
15 early summer months of each calendar year?

16 A. Yes.

17 Q. In fact, the next bold text phrase anyway
18 reads, Resolved that the board of trustees of
19 Allegheny Health, Education and Research
20 Foundation approves the C & L proposed AHERF
21 audit plan for fiscal year 1996 as presented;
22 is that right?

23 A. Yes.

24 Q. And you recall that being a part of the process
25 at full board meetings?

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1 just handed you Exhibit 2057; is that right?

2 A. Yes.

3 Q. And it purports to be I think you'll tell me an
4 April 8, 1996 letter from Coopers & Lybrand to
5 the audit committee of the board of trustees of
6 the Allegheny Health, Education and Research
7 Foundation; is that right?

8 A. Yes.

9 Q. And it, in fact, appears to be the audit plan
10 for that fiscal year; is that a fair way to
11 characterize the document?

12 A. It does, yes.

13 Q. And it is consistent with your recollection of
14 your board service that audit plans like these
15 were indeed presented to the audit committee
16 and then in turn to the big board in this time
17 period; is that correct?

18 A. Well, I think the answer is I'm sure yes, but I
19 was not on the audit committee.

20 Q. I understand.

21 A. So I would --

22 MR. McCLENAHAN: Do you mean in April
23 of '86 -- of '96.

24 A. I was not until October 15th of '97, but it
25 does look that way, and this does look like

IRA GUMBERG

Volume #2

<p style="text-align: right;">Page 322</p> <p>1 THE WITNESS: I don't mean to 2 interrupt your rhythm, but you can see that I 3 was also now asked to be on the AHERF, that 4 would have been 1997, audit committee. 5 BY MR. JONES: 6 Q. Indeed on the same page we just referred to, 7 your appointment is mentioned expressly, and 8 that may help confirm for you the timing that 9 you've given to us earlier. 10 A. Thank you. 11 Q. I think you've just been handed Exhibit 2058, 12 Mr. Gumberg, which I think you'll also tell me 13 upon your review of it is the AHERF audit plan 14 provided by Coopers & Lybrand for fiscal year 15 1997 to which the board minutes we just 16 examined refer; is that accurate? 17 A. Yes. 18 Q. And do you recall receiving -- both attending 19 this meeting in April of '97 and receiving this 20 audit plan? 21 A. No. I do not recall attending the meeting. I 22 recall my first meeting being October. 23 Q. Do you know whether you, as you sit here today, 24 since I asked that in two parts and I shouldn't 25 have, whether you received this audit plan at</p>	<p style="text-align: right;">Page 324</p> <p>1 Q. Okay. 2 A. It does seem that I may have attended prior, 3 but that was my recollection. 4 Q. We may have marked this, but for ease I'm going 5 to pull out other copies now. The December 12, 6 1996 board minutes have been previously marked 7 in this case as Exhibit 832, if I can read the 8 numerals on that exhibit sticker. 9 MR. McCLENAHAN: You don't need to 10 remark them; right? 11 MR. JONES: No. 12 Q. And you are indeed noted on the minutes that I 13 just handed you as Exhibit 832 as attending; 14 correct? 15 A. Yes. 16 Q. And while other matters were discussed at this 17 meeting that had been reviewed with you earlier 18 today, the fiscal year 1996 audited financial 19 statements were also presented and discussed -- 20 MR. BROOKS: Objection. 21 Q. -- I think you'll tell me having reviewed 22 page -- the page that ends with the Bates No. 23 762? 24 A. Yes. 25 Q. And that meets with your recollection of the</p>
<p style="text-align: right;">Page 323</p> <p>1 any time during your board service at AHERF? 2 A. I do not recall. 3 Q. Mr. Gumberg, as you understood the protocol in 4 the annual audit process, the audited financial 5 statements for AHERF and its affiliated 6 enterprises were first presented by the 7 auditors to the audit committee; is that right? 8 A. That's how I understand it. 9 Q. And then the audit committee in turn shared 10 them with the full board thereafter, the 11 audited financial statements? 12 A. I'm not sure it was the -- I'm sure the audit 13 committee reviewed it, but I believe then 14 management presented them to different 15 committees. 16 Q. Thank you for the clarification. Ultimately 17 they were presented by someone to the full 18 board after the audit committee meeting is my 19 point? 20 A. That would be -- yes. 21 Q. And I think -- is it your recollection that 22 your first board meeting was in December of 23 1996 now, your first full board meeting, that 24 is at the AHERF level? 25 A. That was my recollection.</p>	<p style="text-align: right;">Page 325</p> <p>1 meeting as well? 2 A. Yes. 3 Q. And that the minutes -- the statements were 4 ultimately approved; is that accurate? 5 A. Yes. 6 Q. Mr. Barnes, it is indicated, presented the 7 audited financial statements for fiscal year 8 1996, and he also apparently, according to the 9 minutes, presented a report that included 10 related debt compliance letters for AHERF; is 11 that accurate? 12 A. I see report on internal controls. 13 Q. I'm sorry, let me refer you back to 762. 14 A. I see, yes, included the debt compliance 15 letters, yes. 16 Q. And that's a presentation that you are familiar 17 with that was annual in that the auditors would 18 perform certain activity with respect to debt 19 compliance and present a report? 20 A. Yes. 21 Q. I want to hand you what has been marked earlier 22 in another deposition as Exhibit 1939, which I 23 think upon review you will tell me is a report 24 of independent accountants signed by Coopers & 25 Lybrand and dated September 11, 1996, on debt</p>

23 (Pages 322 to 325)

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<p style="text-align: right;">Page 326</p> <p>1 compliance for fiscal year 1996; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. In the second paragraph, Coopers & Lybrand</p> <p>4 tells the board of trustees of Allegheny</p> <p>5 General Hospital -- a member of which you were;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. -- that in connection with their audit, nothing</p> <p>9 came to their attention that caused them to</p> <p>10 believe that the obligated group was not in</p> <p>11 compliance with the covenants insofar as they</p> <p>12 relate to accounting or auditing matters</p> <p>13 contained in section 7 of the reimbursement and</p> <p>14 security agreement dated April 1, 1995, with</p> <p>15 Morgan Guaranty Trust Company of New York and</p> <p>16 PNC Bank; is that a fair statement or fair</p> <p>17 recitation of the sentence?</p> <p>18 A. Yes, and it looks like it helps, perhaps helps</p> <p>19 me date back to an earlier discussion, I</p> <p>20 couldn't tell what year on -- that I introduced</p> <p>21 the bank, the institution. This might have</p> <p>22 been Morgan Guaranty. I just don't remember,</p> <p>23 it was either Morgan or JP Morgan.</p> <p>24 MR. BROOKS: Okay.</p> <p>25 Q. What importance did you attach to these reports</p>	<p style="text-align: right;">Page 328</p> <p>1 Hospital, or AHERF for that matter, that</p> <p>2 through that work they had uncovered a</p> <p>3 violation of a debt covenant or specifically an</p> <p>4 unrestricted fund balance covenant that was</p> <p>5 included in the security agreement with Morgan</p> <p>6 Guaranty and PNC, would that have caused you</p> <p>7 concern?</p> <p>8 MR. BROOKS: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. And for the reasons we just mentioned?</p> <p>11 A. Yes.</p> <p>12 Q. You were not so told, were you?</p> <p>13 A. I was not.</p> <p>14 Q. Mr. Gumberg, we are handing you now what has</p> <p>15 been marked early in these proceedings as</p> <p>16 Exhibit 22.</p> <p>17 MR. McCLENAHAN: 22.</p> <p>18 Q. Which I think I was there, I can testify.</p> <p>19 MR. McCLENAHAN: I don't think I've</p> <p>20 seen anything with less than four digits.</p> <p>21 Q. I will ask you to look at it and tell me if you</p> <p>22 recognize it as a September 23rd, 1996</p> <p>23 management comment letter signed by Coopers &</p> <p>24 Lybrand to the board of trustees of the</p> <p>25 Allegheny Health, Education and Research</p>
<p style="text-align: right;">Page 327</p> <p>1 of independent accountants, including Exhibit</p> <p>2 1939, with respect to debt compliance issues?</p> <p>3 A. Important that our -- our fund balance and/or</p> <p>4 our income and liquidity was, in fact,</p> <p>5 acceptable to our lending institutions.</p> <p>6 Q. If, in fact Allegheny General Hospital or any</p> <p>7 member of the obligated group or the obligated</p> <p>8 group itself was not in compliance, what kind</p> <p>9 of circumstances might befall the enterprise in</p> <p>10 that event?</p> <p>11 A. It could have -- I would think it could have</p> <p>12 caused a default.</p> <p>13 Q. And what can a default lead to?</p> <p>14 A. I'm not sure. Some defaults could have</p> <p>15 cross-defaults that would lead to other sources</p> <p>16 of collateral, could have led to our inability</p> <p>17 to refinance or raise funds through the --</p> <p>18 through the public market, the bond market. It</p> <p>19 may have caused some reputational damage.</p> <p>20 Q. And defaults can lead to long-term debt being</p> <p>21 declared current and due; is that accurate?</p> <p>22 A. I believe that's the case.</p> <p>23 Q. If Coopers & Lybrand instead of providing the</p> <p>24 report marked as Exhibit 1939 had told the</p> <p>25 board of trustees of Allegheny General</p>	<p style="text-align: right;">Page 329</p> <p>1 Foundation?</p> <p>2 MR. BROOKS: Objection, lack of</p> <p>3 foundation.</p> <p>4 MR. McCLENAHAN: Are you asking</p> <p>5 whether he recognizes this letter as such or --</p> <p>6 MR. JONES: We can break it down. I</p> <p>7 understand the --</p> <p>8 MR. McCLENAHAN: -- has he ever seen</p> <p>9 it before?</p> <p>10 MR. JONES: Well, I asked him what I</p> <p>11 asked him, but I'll break it down.</p> <p>12 BY MR. JONES:</p> <p>13 Q. Does the letter purport to be a letter from</p> <p>14 Coopers & Lybrand dated September 23rd, 1996,</p> <p>15 in the form and format of a management comment</p> <p>16 letter?</p> <p>17 A. It does.</p> <p>18 Q. Do you recall today, Mr. Gumberg, whether you</p> <p>19 received this management comment letter?</p> <p>20 A. I don't recall. I -- I just don't recall.</p> <p>21 Q. I'm going to ask you -- and you've testified</p> <p>22 earlier about what you knew and didn't know</p> <p>23 about how broadly these were circulated. We</p> <p>24 will not rehash that. My question deals with</p> <p>25 the management comment letter's subsection on</p>

24 (Pages 326 to 329)

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1 Coopers & Lybrand had reviewed the internal
2 controls within AHERF and its obligated group
3 entities and stated that there were no matters
4 noted during the audits that would be
5 considered to be material weaknesses in the
6 internal control structure.
7 Do you recall that being the case,
8 that he so reported?
9 A. I don't recall.
10 Q. What does that sentence mean to you as you read
11 it?
12 MR. BROOKS: Objection.
13 A. That's a healthy statement about the
14 institution's controls.
15 Q. And the controls in your mind were what? What
16 kinds of things made up the controls?
17 A. I think the critical -- the critical accounting
18 controls.
19 Q. You don't recall coming away from the audit
20 meeting in October of '97 with any view that
21 Mr. Buettner had opined negatively on the
22 controls, do you?
23 A. May I ask a question?
24 Q. Sure.
25 A. So that I understand? Was this the meeting

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1 where the management letter was presented, a
2 management letter was presented that indicated
3 a number of issues to be suggestions I would
4 say?
5 Q. I can't tell you that the minutes reflect the
6 presentation of a management letter at this
7 meeting.
8 A. Okay. I just want to get my time right, in the
9 right order so I give an honest, appropriate
10 answer.
11 Q. I understand. There indeed was a 1997
12 management letter. I can't tell you from the
13 minutes or my read of them here that it's
14 discussed here.
15 A. I believe that the 1997 -- if I'm right, based
16 on dating, I know I tend to be accurate,
17 certainly with my integrity -- that the 1997
18 management letter that was presented I believe
19 to this audit committee clearly identified
20 issues to be watchful of and that suggestions
21 made.
22 The statement about the fact there
23 are no material weaknesses of our internal
24 controls is a -- is a strong statement to the
25 board and to the committee that what was

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1 submitted were areas to improve, but that the
2 structure of the controls were well in place.
3 That's the way I think I have to answer that,
4 if my timing is accurate.
5 Q. Do you recall learning at any point,
6 Mr. Gumberg, that the actual numbers in the
7 financial statements that were presented post
8 audit but presignature by Coopers & Lybrand in
9 October of 1997 were in any way changed, that
10 the numbers were in any way changed after they
11 ultimately signed the report and the report was
12 distributed after the turn of the year 1998?
13 A. I recall it being identical.
14 Q. You recall it being?
15 A. Identical.
16 Q. Do you recall -- strike that.
17 MR. BROOKS: Jim, I'm going to need
18 to ask for a short break for a moment.
19 MR. JONES: Sure. This is a good
20 time.
21 THE VIDEOGRAPHER: We are now going
22 off the record. The time is 12:01 p.m.
23 - - - -
24 (There was a recess in the proceedings.)
25 - - - -

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1 THE VIDEOGRAPHER: We are now going
2 back on the record. The time is 12:06 p.m.
3 BY MR. JONES:
4 Q. Mr. Gumberg, in connection with Coopers &
5 Lybrand's work as the independent auditors for
6 the AHERF organizations while -- throughout the
7 time you were a trustee of any AHERF enterprise
8 or board committee, did you expect the auditors
9 to bring to the audit committee or to the
10 board's attention material misstatements in the
11 financial statements presented for their audit?
12 A. Yes.
13 Q. Did you expect the auditors to bring to the
14 board and the audit committee's attention
15 intentional misstatements in the financial
16 statements?
17 A. Yes.
18 Q. Did you expect them, that is Coopers & Lybrand,
19 to bring to the audit committee and the board's
20 attention any concerns they had regarding the
21 integrity of financial management or its
22 competence?
23 MR. BROOKS: Objection.
24 A. Yes.
25 Q. Did you expect them, that is the auditors,

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1 Coopers & Lybrand, to bring to the audit
 2 committee and the board's attention fraud on
 3 the part of financial management or suspected
 4 fraud on the part of financial management that
 5 they uncovered?
 6 MR. BROOKS: Objection.
 7 A. Absolutely, if they knew.
 8 Q. Did Coopers & Lybrand ever raise these matters
 9 with you or the committee to your knowledge or
 10 with the board to your knowledge?
 11 A. Certainly not to me. I don't believe to other
 12 board members.
 13 Q. Before --
 14 A. But I don't know everybody.
 15 Q. Before the spring of 1998, did you yourself
 16 question the integrity or competence of
 17 Mr. Abdelhak?
 18 A. No.
 19 Q. Before the spring of 1998, did you question the
 20 competence or integrity of Mr. McConnell?
 21 A. I would say no.
 22 Q. Ultimately both gentlemen were discharged; is
 23 that accurate?
 24 A. Yes.
 25 Q. Explain for me, if you would, what you

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1 understand precipitated Mr. Sherif's departure
 2 from the -- Mr. Sherif Abdelhak's departure
 3 from the organization?
 4 A. I think it was for a couple of reasons: One,
 5 when -- when I and other members of the board
 6 found out of the contravention against our
 7 resolution of not touching funds on the west
 8 that had taken place; secondly, I think the
 9 integrity had come undone from the standpoint
 10 of the physicians, and Sherif in our opinion
 11 lost the ability to lead the medical group;
 12 thirdly, I believe it was due to the fact that
 13 we were not able to turn around the financials
 14 of the institution as promised and that we had
 15 lost the faith in the fact that he could lead
 16 the institution from that perspective; and I
 17 also believe that the fact that the disposition
 18 deal with Vanguard which had been talk and
 19 never really turned into appropriate price or
 20 action had taken place.
 21 Q. When you came to these conclusions, did you
 22 yourself act as promptly as practical?
 23 A. I believe that I did.
 24 Q. In asking Mr. Abdelhak to depart?
 25 A. Well, what I did was I went to what I referred

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1 to as senior leaders of the board. I discussed
 2 it with one or two senior leaders, and I knew
 3 that they picked up the phone and discussed it
 4 with others, and then the momentum just
 5 started.
 6 Q. Why is it as you recall it today that
 7 Mr. McConnell was discharged in the spring or
 8 summer of 1998?
 9 A. I believe it was a recommendation by Tony
 10 Sanzo, who then became the CEO of the
 11 institution, that he felt that he had to go.
 12 Q. Do you recall it involving to your knowledge
 13 anything related to the transfer of certain
 14 reserves from the former Graduate Hospitals to
 15 the Delaware Valley Obligated Group hospitals?
 16 A. Yes, there was an issue regarding that, and I
 17 heard about it the day before, there was a
 18 meeting with MBIA, and I made a recommendation,
 19 I believe it was myself that made a
 20 recommendation we bring in Chuck Queenan as a
 21 special investigator to report to the audit
 22 committee and to report to Dave Barnes. Dave
 23 Barnes agreed with that.
 24 I also wanted to be sure when I heard
 25 it that Sherif was going to present that

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1 situation, that fact that there could be a
 2 problem to MBIA.
 3 Q. Do you know whether he ever did?
 4 A. Yes, I actually think that he did.
 5 Q. With respect to Mr. McConnell, did you move as
 6 quickly as you thought practical to investigate
 7 and make a determination about whether he
 8 should stay with the organization?
 9 MR. BROOKS: Objection.
 10 A. Again, I believe so, it being more in the hands
 11 of the CEO of the organization that had to
 12 guide that, but without question I think that
 13 I -- I passed my comments on.
 14 Q. Before the bankruptcy in July or August of
 15 1998, did you ever question the integrity or
 16 competence of Mr. Buettner or his fellow
 17 Coopers & Lybrand auditors?
 18 A. I never did.
 19 Q. Before that same time period, summer of 1998,
 20 at the time of the bankruptcy, did you ever
 21 question the accuracy -- accuracy of the
 22 audited financial statements you had received?
 23 A. I never did.
 24 Q. If Coopers & Lybrand had told you, Mr. Gumberg,
 25 that the fiscal year 1996 or 1997 financial

<p style="text-align: right;">Page 350</p> <p>1 statements presented for audit were materially</p> <p>2 misstated and that C & L was therefore issuing</p> <p>3 an adverse opinion on those statements, what</p> <p>4 would your reaction have been?</p> <p>5 MR. BROOKS: Objection, calls for</p> <p>6 speculation.</p> <p>7 A. Well, I think I would have been at first scared</p> <p>8 to hear something like that. Secondly, I</p> <p>9 believe we would have brought in consultants to</p> <p>10 help advise us. We may have even asked Coopers</p> <p>11 under an engagement with the audit committee to</p> <p>12 delve deeper and to report back to us their</p> <p>13 additional findings.</p> <p>14 Q. And so you were -- go ahead.</p> <p>15 A. And I think it's also possible that from my</p> <p>16 own -- my business bellybutton, my business</p> <p>17 intuition, that had we been in that position,</p> <p>18 we may have put the brakes on everything that</p> <p>19 was going on until we get our hands around it.</p> <p>20 Q. What do you mean by the brakes on everything?</p> <p>21 A. I would think that it may have affected any</p> <p>22 other acquisition strategy we had. I'm sitting</p> <p>23 here today looking backwards, but I would think</p> <p>24 if we had found ourselves in that position,</p> <p>25 would have had to have looked at everything</p>	<p style="text-align: right;">Page 352</p> <p>1 that have concerned you?</p> <p>2 MR. BROOKS: Calls for speculation.</p> <p>3 A. Frightening.</p> <p>4 Q. And you would have had the same kinds of</p> <p>5 options and could have selected from them as</p> <p>6 you just described?</p> <p>7 A. Absolutely.</p> <p>8 MR. BROOKS: Same objection.</p> <p>9 Q. If C & L or Coopers & Lybrand had told you that</p> <p>10 net income, the lines to which we just referred</p> <p>11 on the audited financial statements, on the</p> <p>12 fiscal year 1996 statement of operations</p> <p>13 presented for their audit had been overstated</p> <p>14 in violation of generally accepted accounting</p> <p>15 principles by approximately \$80 million, what</p> <p>16 would your reaction have been?</p> <p>17 MR. BROOKS: Objection.</p> <p>18 A. I believe it would have been to replace for</p> <p>19 sure the financial side of our house and maybe</p> <p>20 as well possibly our CEO.</p> <p>21 Q. And you had the same kind of options with</p> <p>22 respect to putting a brake on further</p> <p>23 acquisitions as well?</p> <p>24 A. Absolutely.</p> <p>25 Q. Do you believe you would have pursued that</p>
<p style="text-align: right;">Page 351</p> <p>1 that was happening.</p> <p>2 Q. Including hospital acquisitions and physician</p> <p>3 practice acquisitions?</p> <p>4 MR. BROOKS: Objection.</p> <p>5 A. That's what I meant by, yes, by acquisitions.</p> <p>6 Q. That's what you meant?</p> <p>7 A. That's what I meant.</p> <p>8 Q. If the inquiries either led by Coopers &</p> <p>9 Lybrand, the board, or other consultants had</p> <p>10 drawn into question the competence and</p> <p>11 integrity of Mr. Abdelhak or Mr. McConnell or</p> <p>12 others in financial management leadership, what</p> <p>13 options did you have?</p> <p>14 MR. BROOKS: Objection.</p> <p>15 A. I think none other than terminate them.</p> <p>16 Q. And do you believe you would have acted</p> <p>17 prudently to select the appropriate option of</p> <p>18 those -- option from those that you just gave</p> <p>19 us?</p> <p>20 MR. BROOKS: Objection.</p> <p>21 A. Absolutely.</p> <p>22 Q. If Coopers & Lybrand had told you that the</p> <p>23 fiscal year 1996 or 1997 financial statements</p> <p>24 presented for their audit had been</p> <p>25 intentionally misstated by management, would</p>	<p style="text-align: right;">Page 353</p> <p>1 course?</p> <p>2 MR. BROOKS: Objection.</p> <p>3 A. I believe we -- I believe that would have been</p> <p>4 a course to pursue.</p> <p>5 Q. Would you have required that the inappropriate</p> <p>6 entries be reversed or restated?</p> <p>7 A. I think we would have had an obligation to do</p> <p>8 that as a -- as a public entity.</p> <p>9 Q. If C & L or Coopers & Lybrand had told you that</p> <p>10 net income on the fiscal year 1997 statement of</p> <p>11 operations presented for audit had been</p> <p>12 overstated contrary to generally accepted</p> <p>13 accounting principles by approximately \$100</p> <p>14 million or more, would your reaction have been</p> <p>15 the same?</p> <p>16 A. Yes.</p> <p>17 MR. BROOKS: Objection.</p> <p>18 Q. And your options and your course have been the</p> <p>19 same?</p> <p>20 MR. BROOKS: Objection.</p> <p>21 A. Yes, sir.</p> <p>22 Q. If Coopers & Lybrand had told you that its</p> <p>23 auditors had come to question the integrity and</p> <p>24 honesty of senior financial management, would</p> <p>25 that have concerned you?</p>

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1 MR. BROOKS: Objection.
 2 A. Terribly so.
 3 Q. And you would have had the same options and
 4 could have pursued the same courses?
 5 MR. BROOKS: Objection.
 6 A. Yes, sir.
 7 Q. If Coopers & Lybrand had informed you that the
 8 fiscal year 1996 or 1997 financial statements
 9 presented for audit were the product of
 10 fraudulent conduct or suspected fraudulent
 11 conduct on the part of financial management,
 12 what would your reaction have been?
 13 MR. BROOKS: Same objection.
 14 A. I think the same feeling of great fear.
 15 Q. Would you have had the same kinds of options?
 16 A. I believe so.
 17 Q. And do you believe you would have followed the
 18 same kinds of courses?
 19 MR. BROOKS: Objection.
 20 A. Yes, sir.
 21 Q. Would audit revelations like these have
 22 affected your view about the financial success
 23 of the strategy to acquire eastern hospitals
 24 and physician practices?
 25 MR. BROOKS: Objection, calls for

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1 speculation.
 2 A. I would suspect it would have had an impact. I
 3 just want to be careful to say that I believe
 4 that part of the AIHG acquisitions was also the
 5 defensive mode that we were -- that our better
 6 physician groups or better physicians were
 7 being targeted by competitors. I think I -- in
 8 the bigger picture of what you are -- what you
 9 are asking me, the answer though is would have
 10 called into question the strategy clearly.
 11 Q. Would audit revelations like these for fiscal
 12 year 1996 as we just discussed them have caused
 13 you to exercise more caution -- strike that.
 14 A. Is it okay if I get a bottle of water?
 15 Q. Sure.
 16 You mentioned that audit revelations
 17 from Coopers & Lybrand like some of those we
 18 have just discussed would have caused you to
 19 put the brakes on acquisitions. Do you recall
 20 that testimony?
 21 MR. BROOKS: Objection.
 22 A. Right.
 23 Q. What about those -- these kinds of revelations
 24 would have caused you to think that would have
 25 been the prudent course?

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1 MR. BROOKS: Objection, calls for
 2 speculation.
 3 A. I think any time that you are under a crisis, a
 4 fraudulent crisis, a misrepresentation crisis,
 5 an accident with the financials, I don't know
 6 how it would be labeled, that would, in fact,
 7 advise you that you are off by maybe 80 million
 8 one year, 100 million the next year, those are
 9 sizable mistakes and I think calls into
 10 question everything that we are doing,
 11 including the execution team.
 12 Q. Does it also or would it also have called into
 13 question your view of whether real efficiencies
 14 or synergies or other benefits had materialized
 15 from the integrated delivery system strategy?
 16 A. Correct, I think that's -- that goes without
 17 saying, yes.
 18 Q. You were never told anything -- strike that.
 19 Were you ever told anything by
 20 Coopers & Lybrand that led you to believe that
 21 the acquisition of The Graduate Hospitals could
 22 threaten AHERF's ongoing financial viability?
 23 A. I don't -- I don't recall hearing that from
 24 Coopers.
 25 Q. Do you recall seeing anything in the audited

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1 financial statements that you reviewed that led
 2 you to think that the acquisition of The
 3 Graduate Hospitals could threaten AHERF's
 4 ongoing financial viability?
 5 A. I don't recall that either.
 6 Q. Were you ever told anything by the auditors or
 7 did you ever see anything in the audited
 8 financial statements for fiscal years 1996 or
 9 1997 that led you to believe that ongoing
 10 physician practice acquisitions could threaten
 11 the financial viability of AHERF?
 12 A. I don't recall that either. If I could maybe
 13 elaborate on that question, I would say that
 14 based on the financials that were presented to
 15 us at a finance level, in terms of budgets,
 16 that AIHG drag on earnings, so to speak, was
 17 absorbable on a consolidated basis.
 18 Q. It was your view throughout your board service
 19 that AIHG losses, both capital and income,
 20 could be funded by the reserves of the greater
 21 institution?
 22 A. Either earnings and/or reserves, yes.
 23 Q. In that connection, Mr. Gumberg, I'm going to
 24 ask you to refer back to an exhibit that
 25 Mr. Brooks showed you, Exhibit 522, which is an

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1 April 10, 1997 letter from Mr. McConnell to the
2 board of trustees.

3 MR. McCLENAHAN: What date?

4 MR. JONES: April 10, 1997, enclosing
5 slides from a then recent board retreat.

6 A. Okay. I have it.

7 Q. I'm going to ask you to skip to page that ends
8 896, which is towards the very back of the
9 document, and is headed Allegheny Integrated
10 Health Group Projected Statement of Revenue and
11 Expenses for Fiscal Years --

12 MR. BROOKS: 896?

13 MR. JONES: Yes.

14 Q. -- Fiscal Years 1997 through 2000. Are you
15 with me?

16 A. Yes, sir.

17 Q. I think I'm going to highlight for you a line
18 or a row rather that received no highlighting
19 during your prior examination on this document,
20 and that is the total net income/loss row.

21 A. Yes, I see it.

22 Q. It does indeed show a I think at the time
23 projected loss for the entire Allegheny
24 Integrated Health Group enterprise of 53
25 million in 1997; is that right?

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1 practice acquisition bottom line, although it
2 hits a bump in 1998, as depicted here indicates
3 smaller losses in '99, 2000; is that fair?

4 A. Clearly.

5 Q. And is that consistent then with your general
6 recollection of the way AIHG and its efforts
7 were depicted for you that the losses would
8 diminish over time?

9 A. Yes.

10 Q. And, in fact, as you understood the program,
11 operating losses were reflected in
12 presentations to you by management as a
13 short-term phenomenon; is that accurate?

14 A. Excuse me. I'm making too much noise so let me
15 put it away. I'm sorry, could you ask that
16 again?

17 MR. JONES: Maybe we could have that
18 read.

19 - - - -

20 (The record was read back by the Reporter.)

21 - - - -

22 A. That's correct. As a matter of fact, I think
23 that it was actually viewed as seed money for
24 it ultimately would become either profitable or
25 profitable through the generation of referrals.

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1 A. Yes.

2 Q. But then those losses as a matter of the
3 projections set forth gets smaller and, in
4 fact, turn to gains by the year 2000; is that
5 right?

6 A. Yes.

7 Q. And that is the total net income apparently --

8 A. I would think that's -- fiscal 2000?

9 Q. Yes.

10 A. So that would be in 1999.

11 Q. Thank you. In any event, these losses turning
12 to gains as a trend are total in that they
13 include both physician practice operations and
14 risk contracting endeavors, at least as
15 depicted here?

16 A. Yes. I -- I should point out, if it's okay.

17 Q. Go ahead.

18 A. I should point out that the physician practice
19 bottom line continues to be negative through
20 fiscal 1999 -- through fiscal 2000, which is
21 year 1999, and it's the risk contracting that
22 is profitable from day one and grows
23 significantly to offset that. I believe I'm
24 reading that correctly.

25 Q. I understand, and, in fact, the physician

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1 Q. I think I'm going to ask you to turn your
2 attention now, Mr. Gumberg, to events in 1998
3 and -- or at least primarily in 1998.

4 A. Okay.

5 Q. And you discussed today and I think at some
6 point yesterday your concern about the
7 potential misclassification of loans from AGH,
8 AGH's, with an apostrophe S, funded
9 depreciation accounts to fund eastern
10 operations. Do you recall that testimony?

11 A. I do.

12 Q. Part of what you thought was the problem when
13 you discovered these loans and their size -- I
14 think for the first time in October of 1997; is
15 that right?

16 A. That is correct.

17 Q. -- was the misclassification on the financial
18 statements; is that right?

19 A. Yes, a mislabeling I thought, right, maybe a
20 misclassification.

21 Q. And I think we are saying synonymous terms.
22 Descriptions in the financial statements of the
23 loans that you didn't think were fair?

24 A. Correct.

25 Q. And then I think I understood that you had

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1 Q. And did you understand that that vetting was to
 2 take place while these hospitals that were
 3 former members of the Graduate Health System
 4 were corporately housed in an enterprise known
 5 as SDN?
 6 A. Yes, and I believe that -- at least I believe I
 7 understood it to be taking place that way
 8 because there were certain assets that may not
 9 be merged in, certain assets that may be
 10 eliminated.
 11 Q. Or excluded?
 12 A. Right, correct.
 13 Q. And that further review would determine which
 14 would be which?
 15 A. That's why I believe the SDN vehicle was set
 16 up.
 17 Q. Did you ever come to learn that at what time
 18 period any of the former Graduate Hospital or
 19 Graduate Health System enterprises were
 20 actually made a part of AHERF?
 21 A. I don't remember.
 22 Q. Do you recall it being in the spring or early
 23 summer months of 1997?
 24 A. Could have. Could have been. I -- I don't --
 25 was it summer when -- did Centennial become the

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1 board, was it known as the Centennial board?
 2 Q. There was a Centennial board.
 3 A. Is there any interrelation? I'm just trying
 4 to --
 5 Q. We just want your best recollection.
 6 A. Then I can't answer. I don't know.
 7 Q. That's fine.
 8 A. I'm trying to answer you.
 9 Q. And we understand you are trying to be as
 10 forthright as you can be.
 11 A. That's right.
 12 Q. I think in testimony regarding the October 15,
 13 1997 audit committee meeting you described
 14 Mr. Abdelhak's comments an explanation of the
 15 foundation of these intercompany loans that had
 16 occurred. Do you recall that testimony?
 17 A. Yes.
 18 Q. Mr. Buettner was also involved in that
 19 conversation by the minutes or transcribed
 20 notes that we saw. Do you recall that being
 21 the case as well?
 22 A. I recall him I believe answering questions.
 23 Q. And do you recall his role to be answering
 24 questions about the accounting rather than the
 25 reasons for the loans?

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1 A. Yes, that was my recollection.
 2 Q. Was part of your concern about the intercompany
 3 loans revealed in October of 1997 to you the
 4 lack of prior board or board committee
 5 approval?
 6 A. I think more knowledge than approval.
 7 Q. And why do you say that?
 8 A. I just think that it was -- it came across as a
 9 surprise to me the way I heard it and when I
 10 heard it and seemed to be a substantial number.
 11 Q. When we discussed or rather you discussed this
 12 topic on the record earlier, I want to make
 13 sure I understood the conversation. Did you
 14 understand these loans that were revealed in
 15 a -- strike that entirely. New topic.
 16 A different loan type transaction
 17 occurs and is ultimately shared with you in the
 18 spring of '98, and that is the taking of
 19 amounts previously held in funded depreciation
 20 at Allegheny Valley and Forbes Hospital. Do
 21 you remember that testimony earlier today?
 22 A. I do.
 23 MR. McCLENAHAN: Object to form. I
 24 don't believe that's ever been described as a
 25 loan.

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1 Q. The taking of funds.
 2 A. I was going to say the same thing, it was a
 3 taking. I don't know that it was a taking to
 4 be replaced.
 5 Q. And I take your edit and Mr. McClenahan's edit
 6 to my question, and with that edit it is your
 7 recollection of the circumstances there
 8 involved that amounts previously held in
 9 Allegheny Valley Hospital's and the Forbes
 10 Hospital's funded depreciation accounts were
 11 used by Mr. Abdelhak to repay a line of credit
 12 to the Mellon Financial institution. Is that
 13 the way you recall the transaction?
 14 A. That's the way I recall it, plus some other
 15 AHERF funds.
 16 Q. I understand. And that endowment funds and
 17 their use to pay whomever they might have been
 18 used to pay was a separate issue; is that fair?
 19 A. Yes.
 20 Q. All of which you learned about, if at all, not
 21 until 1998; is that correct?
 22 MR. BROOKS: Objection.
 23 A. I learned about it -- I think I learned about
 24 it when I had the second call from Sherif.
 25 Q. Which was in, as you recall it, 1998?

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1 A. Yes, correct.
 2 -----
 3 (Exhibit 2060 marked for identification.)
 4 -----
 5 Q. Mr. Gumberg, I have just handed you what has
 6 been marked as Exhibit 2060, and I'm going to
 7 ask you if you know what it is and if you would
 8 tell me?
 9 A. This is a recitation of what happened from the
 10 first time I received the call from Sherif
 11 where I decided a couple days later to begin
 12 memorializing these dialogues.
 13 Q. So this document would have been started within
 14 a few days of October 20 -- or April 23rd or
 15 24, 1998?
 16 A. Well, certainly within a week I would have felt
 17 that I would have started this.
 18 Q. And did you create it in handwriting and have
 19 it typed, or did you type it yourself?
 20 A. I don't type, so I would have written the daily
 21 comments and then have it typed by my
 22 secretary.
 23 Q. And why is it again -- strike that.
 24 Is this the chronology that you
 25 referred to earlier in your testimony today?

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1 A. Yes.
 2 Q. And why is it that you created the chronology
 3 again?
 4 A. When I received the phone call that he had paid
 5 off Mellon --
 6 Q. The "he" in that sentence is Mr. Abdelhak?
 7 A. "He" being Sherif Abdelhak, and the use of
 8 AHERF funds, I just began, just sort of didn't
 9 feel right in my stomach.
 10 Q. And it was for your purpose of documenting
 11 events so that you could recall them at a later
 12 time?
 13 A. Yes.
 14 Q. And it would have been your best recollection
 15 of events at the time, this document?
 16 A. Oh, absolutely.
 17 Q. At some point in the summer and fall of 1998 or
 18 summer or fall of 1998, there were questions
 19 raised at the board level and audit committee
 20 level about the accuracy of certain of the
 21 audited financial statements of AHERF in prior
 22 years. Is that accurate?
 23 A. I believe so, yes.
 24 Q. And you were a part of some of the meetings at
 25 which that topic was discussed?

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1 A. I would think I was.
 2 Q. And ultimately is it your recollection,
 3 Mr. Gumberg, that there was a public
 4 announcement issued jointly by the AHERF board
 5 and the then-merged auditing firm of
 6 PriceWaterhouseCoopers that no further reliance
 7 should be taken on the 1997 financial
 8 statements that had been audited by Coopers &
 9 Lybrand?
 10 A. Yes, that's correct.
 11 Q. Did you find -- strike that.
 12 Do you recall being involved in the
 13 determination to issue that statement, that
 14 public statement?
 15 MR. McCLENAHAN: I'm sorry, what was
 16 your question?
 17 MR. JONES: Does he recall being
 18 involved in the issue to the public no further
 19 reliance statement.
 20 A. I'm not sure if I was involved in the -- in the
 21 decision, but I -- because I think it was
 22 professionally guided by our professionals, but
 23 I certainly didn't -- I certainly went along
 24 with it.
 25 MR. McCLENAHAN: Do you want this

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1 marked as an exhibit?
 2 MR. JONES: It's already been marked.
 3 Q. Mr. McClenahan is doing me the great favor of
 4 handing you Exhibit 1289, Mr. Gumberg, and I'm
 5 going to ask you to review it and tell me if
 6 you can identify it as the statement that no
 7 further reliance should be had.
 8 -----
 9 (The witness reviewed the Exhibit.)
 10 -----
 11 A. I think this is the document that was released.
 12 Q. And is it your recollection that at least the
 13 two items which appear next to black diamonds
 14 in the release were accounting treatments
 15 discussed with board or audit committee members
 16 before the release of this statement?
 17 A. Well, the Graduate situation I know for sure.
 18 Q. And that's the first black diamond; correct?
 19 A. Yes, and correctly reversing reserves and the
 20 income I think is what that was. I don't --
 21 Q. And the second one is earnings and tradings
 22 from certain restricted funds may have been
 23 incorrectly reported as net assets released
 24 from restrictions and investment income. Do
 25 you see that?

IRA GUMBERG

Volume #2

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1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
 2 COUNTY OF ALLEGHENY) SS:

3 I, Heidi H. Willis, RPR, CRR, a Court Reporter
 4 and Notary Public in and for the Commonwealth of
 5 Pennsylvania, do hereby certify that the witness, IRA
 6 GUMBERG, was by me first duly sworn to testify to the
 7 truth; that the foregoing deposition was taken at the
 8 time and place stated herein; and that the said
 9 deposition was recorded stenographically by me and
 10 then reduced to printing under my direction, and
 11 constitutes a true record of the testimony given by
 12 said witness.

13 I further certify that the inspection, reading
 14 and signing of said deposition were NOT waived by
 15 counsel for the respective parties and by the
 16 witness.

17 I further certify that I am not a relative or
 18 employee of any of the parties, or a relative or
 19 employee of either counsel, and that I am in no way
 20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
 22 and affixed my seal of office this 7th day of
 23 October, 2003.

24 _____
 25 Notary Public

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1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
 2 COUNTY OF ALLEGHENY) S H E E T

3 I, Ira Gumberg, have read the foregoing pages
 4 of my deposition given on Friday, October 3, 2003,
 5 and wish to make the following, if any, amendments,
 6 additions, deletions or corrections:

7 Page/Line Should Read Reason for Change
 8
 9
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 13
 14
 15
 16
 17
 18
 19

20 In all other respects, the transcript is true and
 21 correct.

22 _____
 23 IRA GUMBERG

24 Subscribed and sworn to before me this
 25 _____ day of _____, 2003.

 Notary Public
 AKF Reference No. HW77545

41 (Pages 394 to 395)